

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1549

Citations Affected: IC 5-14; IC 8-1-2.3-6.

Synopsis: Utility consumer information and service areas. Provides that the address, telephone number, and Social Security Number of a customer of a municipally owned utility is confidential and not accessible to the public. (This conference committee report adds a provision exempting records relating to negotiations between the Indiana department of transportation and a landowner and inserts SB 473 which provides the following: (1) Modifies procedures that must be followed when a municipally owned electric utility seeks to change its assigned service area to include territory that has been annexed by the municipality. (2) Provides that the municipally owned electric utility must pay additional severance damages to the incumbent electricity suppliers in the annexed area based on electricity sold to service accounts established in the annexed area during the five year period beginning on the effective date of the annexation ordinance. (3) Provides that the severance payments must continue for each service account for the five year period beginning on the date the service account is established. (4) Requires the Indiana utility regulatory commission (IURC) to determine and enforce payment of severance damages when the parties cannot agree on the amount of the damages. (5) Requires the IURC to approve a change in the boundaries of the assigned service areas of electric utilities when the affected utilities mutually agree to the change, unless the IURC determines after a public hearing that the change would result in certain consequences.)

Effective: July 1, 2001.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1549 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Page 3, between lines 2 and 3, begin a new line double block
- 2 indented and insert:
- 3 **"(B) Records relating to negotiations between the Indiana**
- 4 **department of transportation and landowners if the records**
- 5 **are created in anticipation of the negotiations or while the**
- 6 **negotiations are in progress."**
- 7 Page 3, line 3, strike "(B)" and insert "(C)".
- 8 Page 3, line 12, strike "(C)" and insert "(D)".
- 9 Page 3, line 12, strike "(B)," and insert "(C),".
- 10 Page 3, between lines 15 and 16, begin a new line double block
- 11 indented and insert:
- 12 **(E) Notwithstanding clause (B), the terms of the final offer of**
- 13 **public financial resources communicated by the Indiana**
- 14 **department of transportation to a landowner shall be**
- 15 **available for inspection and copying under section 3 of this**
- 16 **chapter after negotiations with that landowner have**
- 17 **terminated."**
- 18 Page 5, after line 37, begin a new paragraph and insert:
- 19 "SECTION 2. IC 8-1-2.3-6, AS AMENDED BY P.L.217-1999,
- 20 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 21 JULY 1, 2001]: Sec. 6. The boundaries of the assigned service areas of

electricity suppliers may not be changed except under any one (1) of the following circumstances:

(1) If a municipality ~~which that~~ owns and operates an electric utility system ~~and furnishes~~ **furnishing** retail electric service to the public annexes ~~an~~ area beyond the assigned service area of its municipally owned electric utility, ~~and the ordinance providing for the annexation provides that the annexing city has developed and adopted a fiscal plan and has established a definite policy to furnish the territory to be annexed within a period of three (3) or four (4) years governmental and proprietary services substantially equivalent in standard and scope to the governmental and proprietary services furnished by the annexing city to other areas of the city regardless of topography, patterns of land utilization and population density similar to the territory to be annexed;~~ then the municipally owned electric utility may petition the commission to change the assigned service area of the municipally owned electric utility to include the annexed area. A municipally owned electric utility shall exercise its right to petition the commission to change its assigned service area within sixty (60) days after annexation becomes final or lose its right under this subdivision. The commission shall rule on the petition of the municipally owned electric utility within ninety (90) days after its filing. If, upon notice and after hearing, the commission decides that it is in the public convenience and necessity for the municipally owned electric utility to render service to the annexed area; it shall order the assigned service area of the municipally owned electric utility to be changed to include the annexed area with the right to serve and immediate possession to the municipally owned electric utility. The commission order is enforceable in court pending an appeal of that order. An appellant from a court order enforcing a commission order under this subsection shall not be entitled to a stay of the court order pending appeal. In determining public convenience and necessity, the commission shall give consideration to all relevant matters, including but not limited to the following:

(A) Preference of owners, occupiers, and consumers in the annexed area.

(B) Ability of the municipally owned electric utility to render service after the assignment of service area.

(C) Other utility services to be supplied in the annexed area by the municipality.

(D) Proximity and capability of the service repair facilities of the electricity suppliers involved.

(E) Preference of local government officials.

However, this subdivision does not apply to incorporations, consolidations, mergers, or annexations that are under IC 36-4-3-4(a)(3), IC 36-4-3-4(b), IC 36-4-3-4(h), or IC 36-4-3-4.1, or that are not contiguous under IC 36-4-3-13(b) or IC 36-4-3-13(c). If any change in an assigned service area is ordered by the commission, all of the electric utility property of another electricity supplier which is devoted to retail electric service within such additional assigned service area shall be

1 acquired at its then reproduction cost new depreciated value; in
 2 addition, the acquiring electricity supplier shall pay severance
 3 damages limited to; if applicable, the distribution and substation
 4 facilities dedicated to and located within the annexed area or
 5 relocated by reason of the annexation; or an amount equal to two
 6 and one-half (2 1/2) times the previous year's gross electric sales
 7 from the newly assigned service area; whichever is greater. If the
 8 parties do not agree on the amount the acquiring electricity
 9 supplier is to pay, then the commission shall determine said
 10 amount and order its payment in accordance with this subsection:
 11 according to the following procedures:

12 (A) The municipally owned electric utility shall file its
 13 petition with the commission not later than sixty (60) days
 14 after the annexation becomes effective. The petition must
 15 include a certified copy of the annexation ordinance, which
 16 serves as conclusive evidence that the area has been lawfully
 17 annexed and is part of the municipality. After filing a
 18 petition under this subdivision, the commission shall
 19 promptly enter an order changing the assigned service area
 20 facet maps of the municipally owned electric utility and
 21 incumbent electricity suppliers to include the annexed area
 22 within the assigned service area of the municipally owned
 23 electric utility and giving the right to serve and immediate
 24 possession to the municipally owned electric utility. The
 25 commission order is enforceable in a court pending an
 26 appeal of that order. An appellant from a court order
 27 enforcing a commission order under this subdivision is not
 28 entitled to a stay of the court order pending appeal.
 29 However, this subdivision does not apply to incorporations,
 30 consolidations, mergers, or annexations that are under
 31 IC 36-4-3-4(a)(3), IC 36-4-3-4(b), IC 36-4-3-4(h), or
 32 IC 36-4-3-4.1, or that are not contiguous under
 33 IC 36-4-3-13(b) or IC 36-4-3-13(c).

34 (B) Not later than thirty (30) days after filing a petition
 35 under this subdivision, the municipally owned electric utility
 36 shall determine for each affected incumbent electricity
 37 supplier and pay to that supplier an amount not less than the
 38 value of all the electric utility property of the incumbent
 39 electricity supplier that is devoted to furnishing retail electric
 40 service within the additional assigned service area at its then
 41 reproduction cost new depreciated value. In addition, the
 42 municipally owned electric utility shall pay the incumbent
 43 electricity supplier severance damages in an amount equal
 44 to:

45 (i) the value of the incumbent electricity supplier's
 46 distribution and substation facilities dedicated to and
 47 located within the annexed area or relocated by reason of
 48 the annexation, or an amount equal to two and one-half (2
 49 1/2) times the incumbent electricity supplier's gross
 50 revenues from electricity sales in the annexed area during
 51 the twelve (12) month period immediately preceding the

date the annexation ordinance became effective, whichever is greater; plus

(ii) if additional permanent service locations or service accounts are established in the annexed area during the five (5) year period beginning on the effective date of the annexation ordinance, one mil (\$0.001) for each kilowatt hour of electricity sold to each of those permanent service locations or service accounts for sales that occur during a five (5) year period beginning on the date each service location or service account is established, up to a maximum of one hundred seventy thousand (170,000) kilowatt hours per service account or service location for each monthly billing period.

However, the municipally owned electric utility is not required to pay severance damages under item (ii) if, at the time each annual payment otherwise would accrue, it is purchasing all of its requirements for electric power and energy, except for generation directly provided by the municipally owned electric utility or by a customer, from the incumbent electricity supplier. Severance damages must be paid not later than thirty (30) days after the end of each calendar year in which severance damages have accrued. The municipally owned electric utility and incumbent electricity suppliers shall cooperate to calculate the amount of any severance damages and shall furnish to each other all information and records reasonably necessary for the determination and verification of severance damages. If the municipally owned electric utility and incumbent electricity suppliers cannot agree on the amount of severance damages the municipally owned electric utility is to pay, the commission shall determine the amount and order payment in accordance with this clause. Not later than twenty (20) days after making a payment, the municipally owned electric utility shall certify to the commission and to any affected incumbent electricity supplier that it has paid the amounts required under this clause.

(C) If the municipally owned electric utility fails to make a payment under clause (B), an affected incumbent electricity supplier may, not later than sixty (60) days after the payment is due and after giving the municipally owned electric utility reasonable notice of and an opportunity to cure the defect, file with the commission a petition alleging that a payment due under clause (B) has not been made. If the commission finds after notice and hearing that any payments owed to the incumbent electricity supplier have not been timely and fully paid, the commission shall order the municipally owned electric utility to pay:

(i) the delinquent payments by a date determined by the commission;

(ii) accrued interest at the rate set forth in IC 24-4.6-1-102; and

(iii) the incumbent electricity supplier's costs of filing and prosecuting a petition under this clause.

If the commission finds against the incumbent electricity supplier, it shall order the incumbent electricity supplier to pay the costs incurred by the municipally owned electric utility in defending against the incumbent electricity supplier's petition.

(D) A certified copy of a final commission order that:

(i) determines and orders the payment of severance damages under clause (B); or

(ii) orders the payment of delinquent payments, interest, and costs under clause (C);

may be filed with the clerk of the circuit or superior court of any county in which part or all of the annexed area is located. A commission order that is filed in a court under this clause may be enforced and executed in the same manner as if it were a final judgment of that court.

(2) Upon mutual agreement of the affected electricity suppliers and approval of the commission. **If notice of a verified request for a change of boundary lines by mutual agreement under this subdivision is published in a newspaper of general circulation in every county in which the boundary lines are located and no affected electricity customer requests a hearing within twenty (20) days after the last date of publication, the commission may approve the change without a hearing. The commission shall approve a boundary line change under this subdivision unless the commission finds, after a public hearing, that the change would cause:**

(A) duplication of electric utility facilities;

(B) waste of materials or resources; or

(C) uneconomic, inefficient, or inadequate electric service to the public.

(3) In the case where a landowner owns a single tract of land ~~which~~ **that** is intersected by the boundary lines of two (2) or more assigned service areas, and retail electric service can best be supplied by only one (1) electricity supplier, or in the case where a customer or customers ~~which~~ are housed in a single structure or ~~which~~ constitute a single governmental, industrial, or institutional operation, and the electricity suppliers involved are unable to agree which shall furnish the electric service, any of the electricity suppliers may submit the matter to the commission for its determination based upon public convenience and necessity. If, after notice and hearing, the commission determines that one (1) or more electricity suppliers are to supply the required retail electric service and the boundaries of an assigned service area are to be changed, the assigned service area maps of the electricity suppliers shall be changed to reflect the new boundaries."

Renumber all SECTIONS consecutively.

(Reference is to EHB 1549 as printed March 23, 2001.)

Conference Committee Report
on
Engrossed House Bill 1549

Signed by:

Representative Fry
Chairperson

Senator Weatherwax

Representative Dumezich

Senator Rogers

House Conferees

Senate Conferees